Right Away Foods *and* United Food and Commercial Workers International Union, AFL-CIO, Local Union No. 171, successor to Amalgamated Meatcutters and Butcher Workmen of North America, AFL-CIO, Local No. 171. Cases 23-CA-7945 and 23-CA-8509

20 June 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

Upon charges filed by the Union 16 May 1980 and 26 May 1981, the General Counsel of the National Labor Relations Board issued a consolidated complaint on 17 March 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The consolidated complaint alleges that the Union is the exclusive bargaining representative of the Company's employees in an appropriate unit and that since 29 November 1979 the Company has refused to bargain with the Union by refusing to accept a grievance the Union filed, and by refusing to provide the Union information necessary to process the grievance. The complaint also alleges that since 16 February 1981, and again since 2 February 1983, the Company has refused to bargain with the Union over the terms of a new contract and to provide the Union information it requested necessary for and relevant to the Union's performance of its duties as the employees' collective-bargaining representative. On 11 April 1983 the Company filed its answer, admitting in part and denying in part the allegations in the consolidated complaint.

On 28 April 1983 the General Counsel filed a Motion for Summary Judgment. On 6 May 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[1] We have reviewed the instant matter in light of this standard and conclude that the General Counsel's Motion for Summary Judgment should be granted in part and denied in part.

Allegations Involving Refusal to Accept Grievance or to Provide Related Information

Certain allegations and filings in this case establish that the Union, by letter dated 20 September 1979, forwarded to the Respondent seven dues-checkoff authorization cards signed by seven of Respondent's employees. On 28 September 1979 the Respondent returned the cards along with a letter explaining that it was reluctant to deduct dues from the seven employees because (1) at least one of the employees had informed it that his card was incorrectly dated and that he did not understand that the dues would be deducted from his company pay; (2) the dates on the cards were several months old; and (3) the dates on the cards appeared to have been written by someone other than the employee signing the card.

In a letter dated 30 October 1979 the Respondent again returned the cards to the Union and restated its reasons for not honoring them. The consolidated complaint alleges that on 19 November 1979 the Union filed a grievance with the Respondent over its refusal to honor the authorization cards.[2] The Respondent, in a letter dated 29 November 1979, replied that the collective-bargaining agreement between it and the Union did not permit grievances from the Union and therefore declined to meet with the Union to discuss the grievance. By letters dated 11 January and 13 February 1980 the Union requested that the Respondent furnish it with (1) the names of individuals who did not know that union dues were to be deducted from their payroll check after they had executed authorization cards; (2) the names of individuals who claimed the dates on their authorization cards were incorrect; and (3) any statement that the Respondent might have to support such allegations. In response to the Union's request for information, the Respondent, in a letter dated 29 February 1980, referred the Union to the Respondent's previous letters.

The consolidated complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to accept the grievance and by refusing to provide the information described above. In its answer to the consolidated complaint and its reply in opposition to the Motion for Summary Judg-

[1] See *Lake Charles Memorial Hospital*, 240 NLRB 1330 (1979).

[2] The Respondent denies that a grievance was filed, contending that the document to which the complaint refers was not intended by the parties or by the collective-bargaining agreement to be a grievance.

ment, the Respondent contends that its refusal to honor the dues-checkoff authorization cards occurred outside the 10(b) period and that the General Counsel's allegations that it unlawfully refused to accept a grievance over the authorization cards issue and unlawfully refused to supply information necessary to process the grievance are also barred by Section 10(b) because they were grounded on the untimely charge that it refused to honor dues authorization cards. The Respondent alternatively argues that the grievance was untimely filed, that the matters involved were not subject to the contractual grievance procedure, that it had no obligation to supply the requested information because it was readily available to the Union, and that the Union was not a party to the collective-bargaining agreement.

We find that material issues of fact have been raised concerning the allegations described above. These issues include whether article V of the collective-bargaining agreement, which sets forth grievance procedures, covers the type of grievance the Union filed in this proceeding, and whether the grievance, even if covered by the collective-bargaining agreement, was timely. Accordingly, we will remand these allegations of the consolidated complaint to the Regional Director for the purpose of arranging a hearing thereon.

Allegations Involving Later Requests to Meet and Bargain and to Provide Information

In a letter dated 2 February 1981, the Union requested the Respondent to bargain with it concerning rates of pay, hours of work, working conditions, and other terms and conditions of employment, and to supply certain information that it believed necessary to its bargaining obligations. The Respondent, by letter dated 16 February 1981, advised the Union that it had a good-faith doubt that the Union represented a majority of the employees in the appropriate bargaining unit and accordingly refused to bargain with the Union and to furnish the requested information.

About 18 January 1983 the Union, by letter, notified the Respondent of its desire to engage in collective-bargaining negotiations and requested certain information from the Respondent. By letter about 2 February 1983, the Respondent declined to meet and bargain or to provide the requested information. In its answer to the consolidated complaint and its reply in opposition to the Motion for Summary Judgment, the Respondent contends that it had a good-faith doubt as to the Union's majority status. The Respondent argues that, following the Union's April through June 1977 strike, it rehired only 30 of the over 75 strikers. The Respondent asserts that, of the 215 employees in its employ in 1981, 10 worked through the strike and 193 were new employees not present in 1977. It further asserts that since 1977 there have been five or fewer checkoff cards on file, and no dues have actually been checked off.

The General Counsel contends that, with respect to the Respondent's refusal to bargain, the Respondent is raising issues which were or could have been raised in the representation proceeding and is precluded from relitigating them. The General Counsel further contends that, as a matter of law, the Respondent has violated Section 8(a)(5) of the Act by failing and refusing to provide certain requested information.

We agree with the General Counsel's contentions regarding these allegations. A review of the record, including that of the representation proceeding in Case 23-AC-43, establishes that on 12 August 1980 the Union herein filed a petition seeking to amend the certification issued 2 April 1964 in Case 23-RC-2212 by substituting the United Food and Commercial Workers for the Amalgamated Meatcutters and Butcher Workmen of North America, AFL-CIO (Meat Cutters). On 25 September 1980 the Regional Director issued a Decision and Order amending the certification. The Board granted the Respondent's request for review and on 12 November 1982 issued an order affirming the amendment of the certification.

In its decision on review of the Regional Director's Decision and Order Amending Certification, the Board affirmed the Regional Director's decision and found that the Respondent settled grievances and entered into a collective-bargaining agreement with Meat Cutters Local 171, after learning of its merger with Meat Cutters Local 173. Under these circumstances, the Board found that the Respondent was estopped from challenging the merger of Meat Cutters Local 173 and Meat Cutters Local 171. The Board rejected the Respondent's contentions concerning the merger of the Meat Cutters International and the Retail Clerks International for the reasons stated in *Texas Plastics*, 263 NLRB 394 (1982).

With respect to the Respondent's contentions that it had a good-faith doubt as to the Union's majority status, it is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues the Company raises with respect to its refusal to bargain were or could have been litigated in the prior representation proceeding.[3] The Company does not offer to adduce at a hearing any newly discovered or previously unavailable evidence; nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.[4] We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding.

It is also well settled that an employer has a general obligation to provide information requested by the bargaining representative of its employees when such information is necessary and relevant to that bargaining representative's performance of its duties. See generally *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1955); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). As set forth above, on 2 February 1981 the Union requested the following items:

> 1. The names of all of the unit employees, dates of hire, the rates of pay for each employee, date of birth, marital status, job classification, department and any other pertinent information to the employees.
> 2. A copy, if any, of any profit sharing plan and/or pension fund, the amount of Employer and/or employee's contributions to such plan.
> 3. A copy, if any, of all Rules and Regulations governing the conduct of the employees.
> 4. The amount of Employees' contribution toward the Group Insurance for employee and dependent coverage.

Further, on 18 January 1983 the Union requested the following information:

> 1. Names of all employees, rates of pay, dates of hire, marital status, number of dependents, job classification and department.
> 2. Description of any and all fringe benefits currently provided to all employees such as holiday, jury duty payment, funeral pay, paid vacation etc. including health & welfare, total cost, company share of expense and employee's share of expense, any pension and/or profit sharing plan with an outline of the company's cost as well as employee's cost to participate in such plan, rules and regulations governing the employees.
> 3. Job descriptions.
> 4. If merit wages are provided, the names, amount of merit increases, the date such merit increases were provided, the method and/or procedure used to provide such merit increases.

A review of the requested information establishes that all the listed items fall within the ambit of data which an employer must, on request, provide the Union. We find that the requested information is relevant to the Union's duties as bargaining representative of the employees in the appropriate unit. We therefore hold that the Respondent must provide the Union with the requested information set forth above. Accordingly, with respect to the Company's refusals to bargain and related refusals to furnish information we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a Texas corporation, freeze dries and processes foods at its facility in San Carlos, Texas, where it annually purchases and receives goods and materials in excess of $50,000 from points and places located outside the State of Texas. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

A. *The Certification*

On 25 September 1980 the Regional Director issued an order, which the Board affirmed 12 November 1982, amending the certification by substituting the Union for the Meat Cutters as the collective-bargaining representative of the employees in the following appropriate unit:[5]

> All production and maintenance employees, truckdrivers, warehousemen, and quality con-

[3] In Case 23–AC–43 the Company argued unsuccessfully that an amendment to the certification would be improper because a question concerning representation existed. Had the Company been able to prove the existence of a question concerning representation, the petition would have been dismissed. *Uniroyal, Inc.*, 194 NLRB 268 (1971). The Company had the opportunity in the representation proceeding to litigate the issues of good-faith doubt of majority status.

[4] We have considered the Respondent's reply to the Motion for Summary Judgment with supporting documents and find that it raises no issues of fact or law requiring a hearing concerning any good-faith doubt of the Union's majority status that may have arisen after the amendment of certification proceedings.

[5] In the September 25 order, the Regional Director describes the unit as excluding quality control inspectors. However, the General Counsel alleges in the consolidated complaint, and the Respondent admits in its answer, that the unit includes quality control inspectors. Because the parties agree upon the composition of the unit, and do not contend that it is an issue in this proceeding, we have, without ruling on the issue, included quality control inspectors in our unit description.

trol inspectors employed by the Company in Hidalgo County, Texas, excluding guards, office clericals, professional employees, laboratory technicians and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(2) of the Act.

B. *The Requests to Bargain and the Respondent's Refusal*

Since 2 February 1981 and again since 18 January 1983, the Union has requested the Company to bargain and to provide certain requested information necessary for and relevant to its duties as statutory bargaining representative in the above-described unit, and since 16 February 1981 and 2 February 1983, respectively, the Company has refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after 16 February 1981, and again since 2 February 1983, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, or to furnish the requested information necessary and relevant for the purpose of collective bargaining, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to meet and bargain with the Union, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

As we have also found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with information related to its requests to bargain, we shall order the Respondent to furnish the Union with such information.

ORDER

The National Labor Relations Board orders that the Respondent, Right Away Foods, San Carlos, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to meet and bargain with United Food and Commercial Workers International Union, AFL-CIO, Local Union No. 171, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Refusing to supply requested information necessary for and relevant to the Union's performance of its function as exclusive representative of employees in the bargaining unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All production and maintenance employees, truckdrivers, warehousemen, and quality control inspectors employed by the Company in Hidalgo County, Texas, excluding guards, office clericals, professional employees, laboratory technicians and supervisors as defined in the Act.

(b) On request, furnish the Union with the following information:

> The names of all of the unit employees, dates of hire, the rates of pay for each employee, date of birth, marital status, number of dependents, job classification, department and any other pertinent information to the employees; a copy, if any, of any profit sharing plan and/or pension fund, the amount of Employer and/or employees' contributions to such plan; a copy, if any, of all Rules and Regulations governing the conduct of the employees; the amount of Employees' contribution toward the Group Insurance for employee and dependent coverage; description of any and all fringe benefits currently provided to all employees such as holiday, jury duty payment, funeral pay, paid vacation etc. including health & welfare, total cost, company share of expense and employee's share of expense; jobs descriptions; and, if merit wages are provided, the names, amount of merit increases, the date such merit increases were provided, the method and/or procedure used to provide such merit increases.

(c) Post at its facility in San Carlos, Texas, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 23, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the proceeding be remanded to the Regional Director for Region 23 for the purpose of arranging a hearing before an administrative law judge on the remaining allegations of the consolidated complaint not found herein.

[1]If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to meet and bargain with United Food and Commercial Workers International Union, AFL-CIO, Local Union No. 171, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to supply requested information necessary for and relevant to the Union's performance of its function as exclusive representative of employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All production and maintenance employees, truckdrivers, warehousemen, and quality control inspectors employed at our plant in Hidalgo County, Texas, excluding guards, office clericals, professional employees, laboratory technicians and supervisors as defined in the Act.

WE WILL, on request, furnish the Union with the following information:

> The names of all of the unit employees, dates of hire, the rates of pay for each employee, date of birth, marital status, number of dependents, job classification, department and any other pertinent information to the employees; a copy, if any, of any profit sharing plan and/or pension fund, the amount of Employer and/or employee's contributions to such plan; a copy, if any, of all Rules and Regulations governing the conduct of the employees; the amount of Employees' contribution toward the Group Insurance for employee and dependent coverage; description of any and all fringe benefits currently provided to all employees such as holiday, jury duty payment, funeral pay, paid vacation etc. including health & welfare, total cost, company share of expense and employee's share of expense; jobs descriptions; and, if merit wages are provided, the names, amount of merit increases, the date such merit increases were provided, the method and/or procedure used to provide such merit increases.

RIGHT AWAY FOODS